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7 NATIONAL COMMUNITY
REINVESTMENT COALITION, et al.,
8 Plaintiffs,
9 v.
10 OFFICE OF THE COMPTROLLER OF
THE CURRENCY, et al.,
11 Defendants.
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Case No. 20-cv-04186-KAW

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**ORDER GRANTING IN PART
MOTION FOR SCHEDULING ORDER;
GRANTING STIPULATION RE
BRIEFING SCHEDULE**

23 Re: Dkt. Nos. 24, 25, 31

24 On August 27, 2020, Plaintiffs National Community Reinvestment Coalition and
25 California Reinvestment Coalition filed the instant administrative motion. Plaintiffs requested that
26 the Court clarify whether Civil Local Rule 16-5 applies in this case and set deadlines for the filing
27 of the administrative record and cross-motions for summary judgment. (Dkt. No. 24.) On August
28 31, 2020, Defendants Office of the Comptroller of the Currency and Comptroller Brian Brooks
filed an opposition. (Dkt. No. 26.) Defendants also filed a motion to dismiss. (Dkt. No. 25.) On
September 8, 2020, the parties filed a stipulated request to modify the briefing schedule of the
motion to dismiss, in the event the Court did not consolidate the motion to dismiss and summary
judgment briefing. (Dkt. No. 31 at 2.)

29 The Court GRANTS in part Plaintiffs' administrative motion. The Court finds that Local
30 Rule 16-5 applies in this case. While Defendants argue that Local Rule 16-5 applies only to social
31 security cases, Defendants cite no authority in support. (Dkt. No. 26 at 1.) Indeed, courts have
32 found that “[w]hile Civil L.R. 16-5 is most frequently implicated in review of Social Security
33 matters, it is not limited to such matters.” *See Doe I v. Nielsen*, Case No. 18-cv-2349-BLF
(VKD), 2018 WL 4468393, at *2 (N.D. Cal. July 19, 2018) (applying Local Rule 16-5 to an APA

United States District Court
Northern District of California

1 claim).

2 In light of the pending motion to dismiss, however, the Court DENIES Plaintiffs' request
3 to set deadlines for the filing of the administrative record and cross-motions for summary
4 judgment. Plaintiffs cite no authority that the Court cannot first decide the motion to dismiss.
5 Instead, Plaintiffs argue that the Rule 12 and Rule 56 briefing should be consolidated "because the
6 threshold issues and merits are intertwined." (Dkt. No. 24 at 5.) In *Augustine v. United States*, the
7 Ninth Circuit indeed found that "where the jurisdictional issue and substantive issues are so
8 intertwined that the question of jurisdiction is dependent on the resolution of factual issues going
9 to the merits, the jurisdictional determination should await a determination of the relevant facts on
10 either a motion going to the merits or at trial." 704 F.2d 1074, 1077 (9th Cir. 1983.) Plaintiffs,
11 however, have not demonstrated that such is the case here. Accordingly, the Court finds it
12 appropriate to first consider the motion to dismiss. If the Court finds that the issues raised in the
13 motion to dismiss are intertwined with the merits of the case, the Court may defer ruling on the
14 motion to dismiss.

15 The Court GRANTS the parties' stipulation to modify the briefing schedule of the motion
16 to dismiss. (Dkt. No. 31 at 2.) Plaintiffs' opposition is due by September 28, 2020, and
17 Defendants' reply is due by October 13, 2020. The Court SETS Defendants' motion to dismiss
18 for hearing on November 5, 2020.

19 The Court VACATES the October 6, 2020 case management conference.

20 IT IS SO ORDERED.

21 Dated: September 14, 2020


22 KANDIS A. WESTMORE
23 United States Magistrate Judge

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